

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEWART ABRAMSON, et al,

Plaintiffs,

vs.

AGENTRA, LLC, et al,

Defendants.

Civil Action

No. 18-615

Transcript of MOTION HEARING Proceedings on January 28,
2021, United States District Court, Pittsburgh,
Pennsylvania, before The Hon. Patricia L. Dodge, United
States Magistrate Judge.

APPEARANCES:

For the Plaintiffs: Anthony I. Paronich, Esq.

For the Defendants: William S. Richmond, Esq.

For the Intervenor: Patrick H. Peluso, Esq.

Court Reporter: Amanda M. Williamson, RMR, CRR
6260 Joseph F. Weis Jr. US Courthouse
Pittsburgh, PA 15219
(412) 600-6607

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

P R O C E E D I N G S

(Proceedings held via Zoom; January 28, 2021.)

THE COURT: Good morning. We are here today on plaintiff's motion for final approval of a class action settlement in the matter of Abramson versus Agentra at Docket 18-615. Would counsel enter their appearances, please.

MR. PARONICH: Good morning, Your Honor. This is Anthony Paronich, counsel for class plaintiffs and the settlement class.

THE COURT: Good morning.

MR. RICHMOND: Your Honor, William Richmond, counsel for Agentra, LLC.

MR. PELUSO: Good morning, Your Honor. Patrick Peluso on behalf of the intervenor, Monica Abboud.

THE COURT: All right. Then we're ready to proceed. I just want to remind everyone that because we are doing this via a video conference and we have a court reporter, who I'm sure wants to take down everything properly, just remember that there is sometimes a short delay when we're speaking; and I would ask everyone just to pause and allow everyone to finish what they have to say.

In addition to that, if you can just make sure you speak up and speak clearly so that our court reporter can hear you and we make sure that everything is recorded

1 properly.

2 So we're here today to determine whether a
3 settlement class should be certified and whether the
4 proposed settlement is fair, reasonable, and adequate. So
5 with that, Mr. Paronich, are you prepared to proceed?

6 MR. PARONICH: I am, Your Honor.

7 THE COURT: All right. Please feel free to do so.

8 MR. PARONICH: Thank you. After a dispositive
9 motion practice, the completion of a discovery period, a
10 mediation, the parties reached a settlement in this TCPA
11 class action that would provide a release for a portion of
12 Agentra's liability for violations of telemarketing law.

13 Notably, and as this Court may recall, the
14 plaintiffs had to file a motion to enforce the settlement
15 agreement, which this Court granted after an evidentiary
16 hearing.

17 In addition to the remedial relief necessary under
18 the agreement, the settlement establishes a nonreversionary
19 \$275,000 settlement fund to release the liability of Agentra
20 for calls made to the plaintiffs and calls made by or on
21 behalf of a series of specified agents.

22 But notably, Your Honor, and I'm sure this will
23 come up a series of times today, that release is explicitly
24 limited to the 19,863 individuals that actually purchased
25 Agentra policies as a result of the telemarketing calls.

1 This is in contrast to the many millions of calls
2 to individuals that were made that resulted in those
3 purchases. And I think some background here would be
4 appropriate and helpful to the Court.

5 Through discovery, the plaintiffs learned that
6 calls made to sell Agentra policies are often made by
7 telemarketing call centers that work with lead generators,
8 and those lead generators work with vendors that have a
9 relationship with Agentra insurance agents; and those agents
10 sign independent contractor agreements with Agentra. In
11 other words, there's often a series of degrees of separation
12 between the caller and Agentra.

13 If the settlement is approved, claimants will
14 receive between \$48.39 and \$145.17, depending on how many
15 telephone numbers of theirs were called. As I'm sure we'll
16 discuss in more detail, there was a single objection. There
17 was another request for exclusion. And in contrast, there
18 were no objections from any attorneys general after they
19 received CAFA notice and 2,085 class members took the time
20 to file a claim.

21 As attested in the administrator's affidavit, the
22 notice was successfully delivered to 99.995 percent of class
23 members. There was also a settlement Web site established
24 that allowed any remaining class members who didn't receive
25 their direct notice to be advised about the settlement.

1 10.59 percent of class members filed claims, and
2 that is more than double what my experience is in TCPA class
3 action settlements where you're typically seeing between 3
4 to 5 percent of a claims rate; and 0.005 of the class
5 members filed an objection or a request for exclusion.

6 The plaintiffs' motion explains in further detail
7 why the settlement satisfies the Girsh factors, but I'll
8 give a summary. The complexity, expense, and duration of
9 further litigation supports a settlement. Our firm is one
10 of the few that has taken a TCPA class action through trial;
11 and that case, which is still pending, kind of gives a good
12 road map of what was likely to occur here.

13 In that case, it's the Krakauer versus Dish case
14 explained in our brief. Class certification was granted in
15 2017. Since that time -- I'm sorry. From the class
16 certification motion being filed until the time of trial,
17 there were 45 motions filed. We received a judgment in the
18 class's favor in 2019. Following that judgment, there were
19 ten more post-trial motions.

20 The Fourth Circuit affirmed the judgment. The
21 Supreme Court rejected a petition. And even as we sit here
22 at the end of January in 2021, the parties are still having
23 fights regarding distributions at the district court level.
24 And the defendant has indicated there will be a second
25 appeal about those distributions.

1 With respect to the next Girsh factors, the
2 reaction of the class members, the settlement has been --
3 the reaction has been positive, as outlined above.
4 Discovery in this case was completed. During discovery, the
5 plaintiffs filed multiple motions to compel and received
6 thousands of pages of documents related to class member
7 identities and vicarious liability issues.

8 The plaintiffs also issued a series of third-party
9 subpoenas, which is how we were able to explain to the Court
10 those various degrees of separation with respect to the
11 telemarketing calls.

12 Another Girsh factor to be considered are the risks
13 of the case moving forward. And that's, first, when the
14 agreement was negotiated, the constitutionality of the TCPA,
15 as a whole, was pending before the Supreme Court.

16 Class certification in these cases, you know,
17 frankly, Your Honor, when we're filing an ERISA case or one
18 of the -- an ERISA case is probably the best example. Class
19 certification is certainly a hurdle there; but far more
20 often than not, it's granted.

21 I don't think anyone appearing on the phone today,
22 including Mr. Peluso, whose firm did successfully get class
23 certification in Texas, I don't think class certification is
24 anything close to guaranteed in these cases. I think
25 they're often a coin flip at best. Of course, every case is

1 different with respect to the evidence developed. But
2 looking at class certification as a whole and TCPA cases,
3 they are far from a forgone conclusion.

4 Furthermore, even though there was an existential
5 threat to the statute pending before the Supreme Court
6 during negotiation, the vicarious liability risks here for
7 the multiple levels of separation between the calling
8 conduct and Agentra was important as an evaluation factor
9 and a risk to the case, because a summary judgment motion
10 was going to be one of the next steps that this Court would
11 have evaluated.

12 With respect to the ability to withstand a greater
13 judgment, the plaintiff did review financial documents
14 Agentra provided and weighed those financial documents
15 against the limited class of settlement that was going to be
16 agreed to and the specific risks of this litigation.

17 The recovery in this settlement is well within the
18 range of TCPA settlements that have received approval, and
19 it includes an amount that exceeds consumer recovery
20 provided by much larger companies. And the plaintiffs could
21 provide further citations if it would aid the Court, but we
22 do have a string cite in our brief that talks to consumer
23 recovery and settlements from Capital One, Walgreens,
24 Wells Fargo, and Bank of America that provided a smaller
25 recovery than claimants would get here.

1 And as to the last -- or I think one of the last
2 meaningful Girsh factors in dispute here or that could be in
3 dispute here, I don't think the fact that negotiation was
4 done at arm's length can reasonably be questioned. There is
5 the mediator-supplied affidavit, which is meaningful, but I
6 think the Court needs to look no further than the fact that
7 the plaintiff had to file a motion to enforce the settlement
8 agreement and conduct an evidentiary hearing.

9 With respect to the sole objection that was filed,
10 as indicated earlier, that single objection represents
11 0.005 percent of the class members. And as Judge Kearney
12 held in the Eastern District of Pennsylvania while approving
13 a TCPA class action settlement over four objections, the
14 Third Circuit has found that objection and opt-out rates of
15 one percent respectively to weigh strongly in favor of
16 settlement; and that was in the Power Home Remodeling case
17 that we cited in our brief. And, of course, the amount of
18 objections or opt-outs here comes nowhere close to
19 approaching that.

20 With respect to the objection, Ms. Abboud filed her
21 lawsuit with similar allegations to the plaintiffs here.
22 Six months after the plaintiffs in this action filed this
23 lawsuit and while counsel for Ms. Abboud, her current
24 counsel, claimed to have not been aware of this lawsuit
25 until January of 2020, Ms. Abboud's prior or referring

1 counsel contacted our firm and my co-counsel's firm in
2 November of 2018 regarding her potential participation in
3 this lawsuit; and as we indicated, at ECF 137 in my
4 affidavit. Of course, the filing of this case was also
5 available through a PACER review. But as to the merits of
6 the objection, itself, Your Honor, they should also be
7 overruled.

8 The fact that the claimants settled the claim at
9 3.67 percent of their potential statutory damages is not a
10 reason to deny the settlement. As the plaintiffs' brief
11 explains, there are a number of cases that support that and
12 have overruled similar objections, including Judge Kearney
13 approving the settlement in the Power Home case at
14 0.9 percent of damages.

15 Also, with respect to the actual participants in
16 the settlement, they are going to be receiving between 10
17 and 20 percent of their potential statutory damages. This
18 resolution comes prior to the risks of summary judgment,
19 trial, and appeal.

20 Also, on the next point in the objection, the
21 plaintiffs and I certainly don't object to the Court
22 reviewing the financial documents reviewed by plaintiffs'
23 counsel, but we note that the financial condition of Agentra
24 was one of a series of factors, and I think with good
25 reason, because the financial condition of a company was

1 absolutely a consideration. In the Ward versus Flagship
2 case that Ms. Abboud cites, that her counsel put before this
3 Court, I think this Court should consider it.

4 However, that case is different for a number of
5 reasons. First, that case was settled I believe before a
6 responsive pleading was filed, but I know before any sort of
7 meaningful discovery was taken.

8 Furthermore, unlike telemarketing, and in this
9 case, it's about telemarketing solicitation calls, I
10 understand that case to be about debt collection conduct.
11 In the debt collections space in the TCPA, that is often a
12 strict liability statute for the defendant. That's compared
13 to here, where one of the biggest weaknesses in the case was
14 the vicarious -- is, excuse me, vicarious liability of
15 Agentra.

16 The release provided is also consistent with what
17 has been approved in Pennsylvania Federal Courts in TCPA
18 settlements. It does not provide anything close to complete
19 TCPA peace of mind for Agentra.

20 Most notably, it's limited to the 19,000
21 individuals included in the settlement, and those are
22 individuals who purchased policies. That's in contrast to
23 in discovery the millions of records of calls of individuals
24 that -- calls to individuals that were made that could have
25 resulted in Agentra purchases.

1 So I'm not sure what kind of overlap there would be
2 with Ms. Abboud's classes. I think most notably, Ms. Abboud
3 has never been provided to the defendant -- my understanding
4 is to the defendant, but certainly never to the class
5 counsel or the administrator, who would be able to report
6 back to us a list of here are the individuals in our
7 certified classes, so that a comparison could be done,
8 because I just simply don't think there will be much overlap
9 there, especially in light of how broad the classes that
10 were certified in the Northern District of Texas are
11 compared to here, where the class is, again, limited to the
12 19,000 individuals who actually purchased an Agentra policy.

13 So in close, Your Honor, with the fact that
14 plaintiffs had to file a motion to enforce the settlement
15 agreement, the discovery period has long been closed, I
16 simply don't see an avenue for the 2,035 individuals to
17 otherwise recover for their claims other than through the
18 settlement, which they took the time to file a claim because
19 they did want to participate. And of course, they should
20 get the opportunity to do so.

21 Ms. Abboud or the plaintiffs would have no
22 objection to her opting out and continuing to pursue her
23 claims on behalf of her class, which is a lawsuit Ms. Abboud
24 filed after she approached plaintiffs' counsel about joining
25 this lawsuit.

1 The class she has certified is far larger than what
2 the settlement is here, and it shouldn't stand in the way of
3 the settlement. And I would be, of course, happy to answer
4 any questions that the Court has.

5 THE COURT: Thank you, Mr. Paronich. I have one
6 or two evidentiary questions, and that is, do you wish to
7 move into evidence for the purposes of this hearing any of
8 the affidavits or other exhibits that you've referenced
9 either in your motion or here today?

10 MR. PARONICH: If there's no objection from the
11 other counsel at ECF 137-1, my affidavit, the settlement
12 agreement also on the Court's docket, but if there's no
13 objection from counsel, I think that should be considered by
14 the Court, as well.

15 THE COURT: There are also -- I know there is a
16 declaration of Mr. Geraci that indicates how notice was
17 provided. Do you wish to move that into evidence for
18 purposes of this hearing?

19 MR. PARONICH: Not mentioning that was an
20 oversight, Your Honor, and I appreciate you letting me know.
21 I certainly would, because that does lend support to the
22 success of the notice breach and perhaps most important --
23 one of the important factors is what the recovery will be if
24 the settlement is approved. So, again, if there's no
25 objection from counsel, the plaintiffs would like to move

1 that into evidence. Thank you.

2 THE COURT: Sure. And then finally, there's also
3 an affidavit that you've included in ECF 145, which is your
4 motion for final approval. That's your affidavit. Do you
5 wish to move that into evidence at this time, as well?

6 MR. PARONICH: Yes. ECF 137-1 and ECF 145-1,
7 which is both of my affidavits, please, Your Honor. And if
8 there's no objection from any counsel here, I'll address any
9 of those objections.

10 THE COURT: Are there any other exhibits before I
11 turn to counsel's position with respect to the exhibits that
12 we've identified?

13 MR. PARONICH: No, Your Honor.

14 THE COURT: All right. Mr. Richmond, is there any
15 objection to the admission of the four exhibits that we have
16 referenced?

17 MR. RICHMOND: No, Your Honor.

18 THE COURT: All right. And, Mr. Peluso, I
19 understand you're objecting to the process here in terms of
20 certification and settlement. But do you have any objection
21 to those documents being admitted?

22 MR. PELUSO: No, Your Honor.

23 THE COURT: All right. Then the two affidavits at
24 ECF 137-1 and 145-1 are admitted, as well as the settlement
25 agreement and the Geraci affidavit, which is at ECF 145 as

1 Exhibit 1, are all admitted.

2 And, Mr. Paronich, I will have some questions for
3 you, but I'm going to first allow everyone to be heard; and
4 then I have questions for all of you. So I think in terms
5 of the order, Mr. Richmond, I'm going to turn next to you
6 for anything that you would like to address during the
7 hearing.

8 MR. RICHMOND: Thank you, Your Honor. On behalf
9 of Agentra, LLC, there are certainly a few factors and new
10 information and, in fact, new law that continues to develop
11 in the area of the TCPA. Those considerations and the
12 possibilities of more or less favorable law or facts being
13 developed were a huge factor in just making a decision to
14 ultimately move forward with the settlement.

15 Of course, as Mr. Paronich has pointed out, there
16 was even a considerable battle over whether or not a
17 settlement had been reached. Before having affirmed the
18 reaching of the settlement, the parties had moved for it in
19 all diligence to complete what is set forth both in the
20 statute and the agreement and the applicable procedures.

21 What's really important here to sum up the
22 supplement that I would have to the points and the facts
23 pointed out by Mr. Paronich about the settlement, aside from
24 the Girsh factors, is a couple of different points.

25 Vicarious liability has been, was, and would

1 continue to be, and is still vigorously contested in this
2 case given that Agentra does not make sales calls. There
3 are no allegations that Agentra's employees or officers are
4 making these calls, had subagents make these calls, knew
5 that these calls were being made, hired the third or fourth
6 or fifth-degree vendors in other countries who may have been
7 making these kinds of violative calls as alleged.

8 And so those issues are ones that Agentra would
9 gladly go and fight, particularly as the law has continued
10 to change; but it is bound by the settlement that was both
11 reached by the parties and approved by this Court. And
12 those issues would remain -- and those are issues that most
13 importantly still remain in the Abboud case.

14 And that's why, not to get too folksy, Your Honor,
15 there are times when courts are loathed to let a party get a
16 second or third bite at the apple. This isn't just a third
17 bite at the apple for the Abboud plaintiff, but it would
18 actually be a third bite of the apple for another person's
19 apple.

20 The reason being that in the Abboud case, the
21 court, in Docket 42 in that matter in it's order on
22 certification, denied Abboud the ability to do further
23 discovery, citing Abboud's procrastination as the reason for
24 not extending the discovery deadline.

25 Abboud, while having sent us a few discovery

1 requests, did not take the adequate action to, for example,
2 take depositions, even of Agentra's corporate designee, and
3 was denied that even in the same motion -- or in the same
4 order that granted certification. That has created problems
5 for this plaintiff in her Texas case, Abboud.

6 But now they're trying to come into this case. And
7 the timing is, perhaps, the most important part. In
8 September -- despite having, under her own admission, known
9 about this case since at least January of 2020, though, it
10 may have been even earlier than that, according to
11 Mr. Paronich, at least January 2020, only a few weeks after
12 the denial of further discovery in Abboud did Abboud choose
13 to intervene in this case. That was October 28.

14 So in September, discovery was denied in Abboud;
15 and then now, they have finally decided to move into this
16 other case despite the fact that it had been many months of
17 battle over the settlement agreement, and this Court had
18 already made its decision about approving the settlement.

19 The ultimate question here would be whether or not
20 this additional bite should occur in a different case that
21 largely stems, it appears, from failing to do adequate
22 discovery and what would be fatal defects in the Abboud case
23 that still would be subject to motions for summary judgment
24 and other substantial issues on the merits in that
25 particular case. Whereas, in this particular case, we've

1 already crossed those hurdles and have already moved on.

2 My client would love nothing more than the ability
3 to come in and put more fight into this, especially using
4 new facts of law. But under the law and facts as stated and
5 under this Court's existing ruling, and particularly under
6 the Girsh factors, this is a settlement that was reached
7 after a long battle under the appropriate considerations and
8 one that should move forward, particularly, not least of
9 which, the factor being how far we've already gotten in the
10 notice and settlement procedure.

11 THE COURT: All right. Thank you, Mr. Richmond.
12 I will have some questions for you, as well. But first, I
13 would like to turn to Mr. Peluso, who is here on behalf of
14 the intervenor, Ms. Abboud. Welcome, Mr. Peluso. And you
15 have the floor.

16 MR. PELUSO: Thank you, Your Honor. And I don't
17 want to get too lost in the weeds here, but I do want to
18 correct the record a little bit on what Mr. Richmond said
19 there. He stated inaccurately that we didn't depose
20 Agentra's corporate rep. That's not true. That's
21 actually -- the testimony in that deposition is what formed
22 the basis for our motion for more time to conduct more
23 discovery, because the testimony was inconsistent with the
24 written discovery responses that we had received earlier in
25 the case from Agentra. So we requested more time to chase

1 down those inconsistencies. So that's neither here nor
2 there for our purposes today. I just wanted to correct that
3 statement.

4 So as Your Honor is aware, you know, I've been
5 appointed class counsel in the case pending in the Northern
6 District of Texas. One of the two classes that has been
7 certified includes calls made by two of the agents that are
8 at issue in this settlement; Gabbard and Espinoza. I
9 believe there's eight or nine other ones. Two of them are
10 the ones that are at issue in our case. So, you know, we
11 have a duty to the members of those class -- of our class to
12 ensure that, you know, any settlement reached here is fair,
13 reasonable, and adequate.

14 And I would simply submit that when a defendant
15 puts its financial condition, inability to pay, at issue,
16 class counsel has the duty to verify the accuracy of that
17 claim; and the financial documents that were shared in this
18 case are simply inadequate to do that.

19 I would submit, Your Honor, not to take my word for
20 it, it sounded like Mr. Paronich didn't object to this, but
21 I would certainly ask that the documents that were shared
22 with me and with Mr. Paronich at our separate mediations
23 just be reviewed by Your Honor in camera; and then
24 Your Honor can make up your mind for yourself whether it's
25 adequate -- an adequate representation of the company's

1 financial condition or not.

2 And if not, I would ask that the objection either
3 be sustained or that the Court order the parties to go, you
4 know, back to mediation and, you know, increase the
5 settlement to a point that, you know, more adequately
6 compensates the class and is well within what Agentra can
7 pay.

8 THE COURT: All right. Thank you, Mr. Peluso.
9 And I'll have a couple questions for you, as well. But let
10 me go back to Mr. Paronich and see if I can clarify my
11 understanding about a couple of things. First of all, can
12 you advise me whether there was any incentive agreement with
13 either of the named plaintiffs?

14 MR. PARONICH: Your Honor, if I'm understanding
15 the question, part of our final approval motion is we are
16 applying for a \$10,000-incentive award for each plaintiff.
17 But in the settlement agreement, just like attorneys fees,
18 that's not -- we don't do what I refer to as clear-sailing
19 provisions where the defendant is not allowed to take any
20 position; and just like our fees, we're applying for those,
21 but don't view -- you know, there certainly will be no
22 appeal if they're reduced or denied.

23 THE COURT: No. I understand. And I think my
24 question, perhaps, wasn't as clear as it could have been.
25 It's whether prior to your settlement there was any

1 agreement with either of the named plaintiffs about the
2 amount that they might receive for being named as
3 plaintiffs.

4 MR. PARONICH: Certainly not, Your Honor.

5 THE COURT: All right. And in your original
6 motion for preliminary approval, you had set the amount at
7 \$5,000 for a service award. I know the final -- the motion
8 for final approval and some of the other documents have the
9 amount at \$10,000. Is there any reason for that that you
10 wanted to articulate to me?

11 MR. PARONICH: The reason is not adequate, other
12 than the preliminary approval motion was a typographical
13 error that I take responsibility for.

14 THE COURT: All right. So did the named
15 plaintiffs purchase Agentra policies?

16 MR. PARONICH: Yes. But if I could provide a
17 brief explanation. When these pre-recorded calls will come
18 in, they will advertise the availability of health insurance
19 products. And, of course, there are plenty of health
20 insurance providers there.

21 So in order to identify the source of the company
22 that is benefiting from the calls, both plaintiffs -- and I
23 believe Ms. Abboud, as well, because this is one of the only
24 meaningful ways to determine this information -- will
25 engage with the -- they'll press "1" to the recorded

1 message. They will engage with the telemarketer, who will
2 then transfer them over to a vendor, who will transfer them
3 to an insurance agent; and they will secure that policy.
4 They will cancel it within the contractual period to cancel,
5 and both plaintiffs did that.

6 THE COURT: Okay. Understood. And are the named
7 plaintiffs' claims limited to pre-recorded calls as opposed
8 to the ATDS type of calls?

9 MR. PARONICH: That's also a good question,
10 Your Honor. But it requires a little explanation of the
11 statute. So we only pled pre-recorded calls as a strategy
12 decision. From my experience in TCPA cases, they're the
13 easiest to prove. The statute has an ATDS restriction.
14 It's at 227(b) in the statute. In that same subsection of
15 the TCPA is the ATDS availability.

16 So we could have abandoned our claim for
17 pre-records and focused on ATDS. But with the Third Circuit
18 ruling in Dominguez on ATDS, the Facebook case before the
19 Supreme Court, and, frankly, just that being a tougher hill
20 to climb, we stuck to the pre-records; but they would have
21 had standing to pursue those and still do.

22 THE COURT: So I want to turn for a moment to the
23 description of the class that was in my preliminary approval
24 order and was the description that was provided to me by the
25 parties.

1 So as I read that, and, perhaps, I'm reading it in
2 a way that is different than what was intended, and I'm not
3 going to read the whole thing, because we all are familiar
4 with it, but in relevant part, it states, "Regarding the
5 sale of a product offered by Agentra."

6 When I originally took a look at that, it seemed
7 different in several ways from other allegations that I've
8 seen. First, I know in the notice documents and what you've
9 said in your brief and what we've talked about here today,
10 you're indicating that the class consists of only those
11 individuals who purchased an Agentra policy. Correct?

12 MR. PARONICH: That's correct, Your Honor.

13 THE COURT: And do you read the description of the
14 class as comparable to that or different in some way? In
15 other words, when it relates to calls regarding the sale of
16 a product, is that a broader class than calls that resulted
17 in the sale of a product? And I don't want to parse it too
18 much, but I wondered whether there was a distinction there.

19 MR. PARONICH: I think there is -- I understand
20 the question. And I think it's important from our
21 perspective, and my papers may fall short on this, there's
22 the class that has been defined; and we're tying that class
23 definition to the experience of an explicit class list
24 that's mentioned in the release.

25 So these 19,800 people, they are being -- they are

1 described as individuals who had this experience in the
2 class definition. But to compile the list of individuals
3 who make up that class and, perhaps, more importantly are
4 the only ones subject to the release, we took the
5 individuals that purchased the policy. And I hope that
6 answers the question.

7 THE COURT: It does. So the class list that you
8 were provided, I assume by Mr. Richmond, the 19,000 or so,
9 are only those who purchased the policy, not those who were
10 called?

11 MR. PARONICH: And that's exactly right,
12 Your Honor. And why I know that to be true for a variety of
13 reasons is because as we described in our discovery efforts,
14 part of them were tracking down an individual in Texas who
15 is the subject of a government action right now for illegal
16 robo calling; and we received his records of millions of
17 calls that were made that could have been transferred over
18 to Agentra eventually.

19 THE COURT: Okay. I know one of the things that
20 Ms. Abboud mentions in some of her papers is that there is a
21 distinction between the class that is asserted or alleged in
22 the Second Amended Complaint and the class that was
23 conditionally or at least preliminarily certified. Do you
24 view that as an issue, and can you explain to me why you
25 don't?

1 MR. PARONICH: I think the individuals -- I don't
2 disagree with the characterization, that there is no
3 disputing that this class that was preliminarily approved is
4 different than what was explicitly pled in our complaint.
5 But in terms of the scope of what is being sought, because
6 of limiting it to the individuals who had purchased the
7 policy and limiting the release to these 19,830, it's far
8 narrower than what our discovery efforts -- it's far
9 narrower than what our ambition was, frankly, and our
10 discovery efforts revealed was out there.

11 Just, frankly, we worried about the vicarious
12 liability issues, because I think I have a number of
13 arguments, and I don't know if that makes sense for today,
14 but I did notice in Agentra's response to objection at ECF
15 No. 144, they had, I'm sure, taken a lot of time preparing
16 this flowchart of how the calling works. And while I would
17 have done what I could on summary judgment, I can't dispute
18 that that is how the call flow worked. So we went with a
19 much narrower approach even though Mr. Peluso is correct,
20 it's a different definition.

21 THE COURT: And does the fact that no agents were
22 named in the Second Amended Complaint make a difference from
23 your standpoint?

24 MR. PARONICH: It doesn't, only because -- it
25 would if I was trying to release the conduct of purported

1 agents for their activities other than with Agentra. So
2 because our case focused on Agentra and Agentra
3 Insurance-related conduct, naming the agents in there,
4 because we've so limited them, does not present a problem.

5 I think, in fact, this may -- this definition may
6 read a little different than some TCPA class definitions out
7 there. Frankly, it reads a little different than a number
8 of my TCPA settlement class definitions, but it's because --
9 and it's why I tried to emphasize the point early on, it's
10 because this provides far from peace of mind for Agentra.
11 They have a lot of liability out there.

12 I think Mr. Peluso mentioned there's only potential
13 overlap with a portion of one of the two classes that they
14 have certified. The millions of calls that we found in
15 discovery, they're not touched by these, other than to the
16 extent there's the overlap with the 19,000 individuals,
17 Your Honor.

18 THE COURT: Okay. You mentioned the release. I
19 want to ask you about that for a moment. And I'm looking
20 now at a copy of the class action settlement agreement. And
21 in Paragraph 2, of course, that defines the class. And
22 we've talked about that a little bit.

23 Turning to the release, which is in Paragraph 5, is
24 that release broader? In other words, would it release
25 Agentra from more than just the 19,000 individuals who

1 purchased a policy? And I'm asking about that -- it relates
2 back to my prior question, because as I read the class
3 description, it's people who were called regarding the sale
4 of a product and so on and so forth, which I won't repeat,
5 and then the release -- releases all of the members of the
6 class from, and, again, just paraphrasing, claims arising
7 under the TCPA. So I would like your position on whether
8 the release is broader and would release individuals beyond
9 those who you've identified in your class list.

10 MR. PARONICH: No. And I think it's an important
11 question, and I think the settlement would have major
12 problems if it was releasing people beyond that class list.
13 Our position is that it's absolutely not. You know, not to
14 reveal too much into the settlement discussions that led to
15 the motion to enforce the settlement agreement, they were --
16 it was an important issue for us.

17 And I think under the current status of the
18 settlement, I know you'll have questions for Agentra, as
19 well, but I think Agentra would agree that here, there's a
20 broad release for telemarketing conduct provided if they're
21 called; but it's related to these 19,000 individuals, and
22 it's related to Agentra only.

23 THE COURT: But where does it say that in the
24 settlement agreement? And perhaps it does, but I just want
25 to make sure that I understand whether the release

1 explicitly states that it's limited to those individuals who
2 were sold a product that falls within the class definition
3 as you have described it.

4 MR. PARONICH: And I think it's because the class
5 definition, in itself, is limited to those 19,000
6 individuals. In Section 2, we do make an estimate in the
7 settlement agreement because we didn't have all of the
8 documentation yet, that it's 15,000. But the release is
9 then limited to the individuals in the class; and the
10 individuals in the class, it's just the class list, which is
11 what was delivered to the administrator.

12 THE COURT: No. I understand that the numbers,
13 I'm sure, weren't available to you at the time. I'm just
14 wondering whether a call regarding the sale of a product, as
15 the class is defined, is the same as a call which led to the
16 sale of a product.

17 MR. PARONICH: And I understand the question,
18 Your Honor. And from our perspective, because it is limited
19 to the plaintiffs and any member of the class, which we do
20 describe as this list of people, that's how it would be so
21 limited.

22 THE COURT: Okay. But the list was not part of
23 the settlement agreement, itself?

24 MR. PARONICH: The name of the list was not. But
25 limiting this agreement to the 15,000 individuals, that had

1 been -- the detailed -- and I apologize for just reading,
2 Your Honor. But it does say the detailed and specific data
3 provided by the settling defendant. So it is limited to
4 these individuals labeled as 15,000. It is 19,836 or so.

5 THE COURT: I'm sorry. I just want to make sure I
6 understand your position. So at the time you reached the
7 settlement agreement, at least as I understand it, you
8 didn't have the list. Obviously, that list had not yet been
9 compiled; correct?

10 MR. PARONICH: That is correct, Your Honor.

11 THE COURT: All right. So when we define who is
12 encompassed within that class, I'm just trying to understand
13 how the actual class definition clearly states -- so that we
14 know who would be released, that it relates to a sale. And,
15 again, that there was a sale as opposed to a call regarding
16 a sale, if you understand my distinction.

17 MR. PARONICH: No. I understand it perfectly.
18 And I think that how we identified the people who are called
19 regarding the sale is by limiting it to the specific data.
20 And how that specific data was compiled was simply taking
21 the sales from these agents.

22 THE COURT: Understood. I just want to make sure
23 that in the event that the settlement is approved, that it's
24 crystal clear what the release encompasses and what it
25 doesn't. And I'm just seeing a bit of a distinction there

1 between the definition of the classes.

2 I have looked at your notice or the notice that
3 went out. And, certainly, the notice in several places does
4 relate to the settlement providing a cash award to
5 individuals who were sold an Agentra product. I think that
6 is stated in one part of the notice.

7 In another part, it describes -- and I'm looking at
8 the question of, "Why did I get a notice?" It talks about
9 the fact that you'll get a notice if somebody called your
10 telephone number to sell an Agentra product.

11 So I certainly understand, and I'm also looking at
12 the claim form, which also talks about the sale of a
13 product. So I just wanted to get your perspective on
14 whether or not the class definition in your settlement
15 agreement encompasses the sale of a product as opposed to a
16 call about the sale of a product.

17 MR. PARONICH: And that is our position,
18 Your Honor. But as you could see from the documents, while
19 we did have to file the motion to enforce the agreement, the
20 notice documents were all negotiated, exchanged, and agreed
21 to by the party within the Court's inherent discretion to
22 slightly alter, without altering the settlement, the
23 definition. If it was -- if those three words were changed,
24 I wouldn't have an objection to it. I do get your point.

25 I think because we had a specific list of people we

1 were trying to reach, we explained to them throughout the
2 documents, as Your Honor points out, here is why you fit
3 into the class definition. With respect to the definition,
4 itself, which can -- it can be long and confusing to a
5 typical consumer, we wanted to make them understand the
6 nature of what the case was about, why they were contacted,
7 and why they're being contacted now.

8 THE COURT: All right. And the individuals who
9 received notice were that number that purchased a policy as
10 opposed to some other definition?

11 MR. PARONICH: That's right, Your Honor. And
12 it's -- the notice reach in this settlement, 99.995 percent,
13 that's way higher than the Federal Judiciary Center's
14 77-percent recommendation. It's much higher than what I've
15 typically seen in these cases.

16 And I'm not going to try to take credit for that.
17 I think why that occurred is because when you're purchasing
18 one of these policies, you're providing your own
19 biographical information.

20 This isn't a situation where we have sold or leased
21 data being used to contact people. So why we were able to
22 contact that high of a number through the notice process,
23 it's because we were using sales of policies.

24 THE COURT: And this is a list that was provided
25 to you by Agentra?

1 MR. PARONICH: It was directly provided to the
2 administrator by Agentra, correct. We had no role in
3 compiling the list.

4 THE COURT: And with respect to the individual
5 class members, what would each of them be entitled to
6 receive under the TCPA if you were to prevail at a trial?

7 MR. PARONICH: Yeah. It's a good question,
8 Your Honor. So they are entitled to statutory damages at
9 \$500 for a negligent violation. There is the ability to
10 treble that up to \$1,500. That's within the Court's
11 discretion.

12 And in our jury trial, we did get an award of a
13 willfulness finding. It wasn't easy, but I think one of the
14 major factors that made it so we were able to do it was it
15 was against Dish Network who had, by that time, a 15-year
16 history of government actions filed against it where their
17 agents were continuously being found liable for conduct.
18 But it does allow that.

19 I think we also discussed this a little bit in our
20 papers, but I think it's worth mentioning here, as well,
21 Your Honor. An unfortunate trend, from my perspective, in
22 the TCPA case law has been as more cases are getting towards
23 trial or summary judgments being awarded is the reduction in
24 damages that courts are finding based on what I would label
25 as good-faith compliance efforts.

1 And from our perspective, there is no good-faith
2 defense under the TCPA. You're vicariously liable or you're
3 not. However, with respect to the ability to reduce damages
4 through remittitur, we have seen a number of judgments that
5 have been entered against defendants, I think I cite two or
6 three, in the papers where individuals -- I can remember one
7 that after trial, the reduction was to \$10 a call.

8 And I don't want to say that's a number picked out
9 of the sky, because it's not. But it is the court taking a
10 look at the evidence presented in front of it and just
11 determining that this kind of judgment, which would bankrupt
12 the company otherwise, is more appropriate. And I've seen
13 that entered a number of times. I can provide further case
14 law if it would aid the Court. But I think we cite one or
15 two cases on it. So there's the statutory damages that no
16 longer seem so statutory.

17 THE COURT: One final question for you, and that
18 is: Is there any reason that you believe that regardless of
19 the allegations in the Second Amended Complaint, you're able
20 to negotiate a settlement that may or may not be entirely
21 consistent with how you describe the class in that Second
22 Amended Complaint, if that is understandable?

23 MR. PARONICH: It is. I think there's case law
24 that would support it if we did it this way, but we did it.
25 Because we negotiated a narrower class, I feel no issue with

1 it. I have certainly had settlements approved.

2 Other people, other counsel have had settlements
3 approved under the TCPA and other consumer statutes where
4 you can submit case law about the ability -- the nature of
5 compromise, and bringing complete peace of mind for a nexus
6 of conduct that's related. Here, we're not proffering that,
7 Your Honor, because we did have a different class
8 definition; but we stuck to something narrower to negotiate.

9 THE COURT: Okay. Thank you. I appreciate your
10 answers to my questions. Mr. Richmond, let me turn to you.
11 I have several questions for you, as well. First of all,
12 back to my discussion with Mr. Paronich about the release
13 and the class definition. Do you have anything that you
14 want to add to his explanation?

15 MR. RICHMOND: No, Your Honor. I believe that the
16 Court's reference to the notice documents, themselves,
17 adequately reflects the parties' intent with regards to the
18 scope of the settlement class. It also does get into the
19 reality of the nature of these calls.

20 Not to get too far into the details, but, you know,
21 Agentra is offering a product as an agent. It then
22 contracts with agents which are sometimes groups of agents,
23 who may then have subagents. They are contractors. They
24 work in various places. And they may, themselves, have
25 subagents and subagents and subagents.

1 There are certain rules and restrictions that we're
2 allowed to be able to impose upon them both in the industry,
3 itself, at the regulatory level and then at the employment
4 level as it regards to contractors, so the employment law
5 level.

6 But ultimately, what we're discovering and what
7 some of the evidence was that Mr. Paronich found with
8 regards to the gentlemen in Texas is that a few of these
9 agents would decide to hire another third party that was not
10 even an agent to get leads. And those people would call and
11 say something generic like, "Do you need healthcare?" Well,
12 they don't mention Agentra, because these agents are
13 actually selling for multiple companies at the same time.

14 And one of the issues that's avoided by the
15 settlement and one that I would have liked to bring in this
16 case, but maybe someone will bring it in another case, is
17 whether one company who's not mentioned in a lead call can
18 then be liable for a pre-record when that company is not
19 mentioned and it's actually not even determined that that
20 company might even have a product worth selling until it
21 gets to the actual agent, until that initial robo call or
22 pre-record is transferred to someone else.

23 Now, there's no question that there's a vicarious
24 liability or that vicarious liability is a good-faith
25 allegation that can be made and has been made in this case,

1 but it then comes down to whether or not who actually caused
2 the injury and whether or not you can settle with one
3 plaintiff -- or one defendant even though there may have
4 been seven different companies that were potentially to be
5 offered in a call that did not mention any company names
6 whatsoever.

7 And while the law is still developing in those
8 areas, both of the parties looked and said, "Hey, it might
9 get worse, it might get better on what that law looks like,
10 either better for the defendant or better for the plaintiff.
11 Let's go ahead and end that question because of how distinct
12 this is."

13 And this is very distinct from other cases where
14 you have direct groups or maybe one or two layers between
15 the folks that are asking for the calls or being -- sought
16 to be liable such as Agentra and the underlying agents.

17 But, again, from the intent of what we have put
18 together, is that it reasonably is tailored to the class,
19 even though it is distinct; and I will acknowledge that
20 distinction, as well, and then the reality of what the
21 evidence would show, because of the fact that whether a
22 third caller -- whether there was a call from a lead
23 generator in Panama who offered generic health insurance and
24 then transferred that call to an agent in the United States
25 is something that is going to be a problem.

1 And really, I think it's the problem that
2 Mr. Peluso is seeking to avoid by moving into this
3 settlement, is a problem that he hasn't yet crossed and
4 hasn't had to yet, but will cross in the Abboud case.

5 THE COURT: And do you agree that the release in
6 the settlement agreement only releases those approximately
7 19,000 who -- releases you from liability for the
8 approximate 19,000 or so individuals to whom a notice was
9 successfully delivered?

10 MR. RICHMOND: Yes.

11 THE COURT: Okay. And I know that Mr. Paronich
12 mentioned a willingness to either revise the settlement
13 agreement or perhaps -- and he didn't say this. This is my
14 wording -- wordsmith how the class is described. Is that
15 something that you believe is possible, would be appropriate
16 here, or that you would object to?

17 MR. RICHMOND: Well, Your Honor, I think it has to
18 come down to the question of what the extent of that is and
19 to the degree. To the extent that we take very seriously
20 the Court's ruling that a settlement was reached -- and so
21 to the extent that that's merely clarifying what's already
22 there, then I believe in the spirit of trying to get this
23 case moved forward and get relief for these folks and just
24 let everyone move forward, then there's a certain -- a
25 boundary in which we're just simply being clear as opposed

1 to changing. I would have to reserve the right to further
2 object to both procedure and substance if it gets beyond
3 that.

4 THE COURT: Oh, I understand. And I'm not asking
5 you to commit to anything on that score today. I just want
6 to make sure that if there is some -- if there is some minor
7 clarification that needs to be accomplished, that we have a
8 framework to do it.

9 Let me ask both Mr. Richmond and Mr. Paronich, if,
10 and I am saying if, there was a minor clarification to the
11 description of the class to make it more clear that the
12 class consists of individuals who purchased a policy, would
13 there have to be another round of notices to the same group
14 that have already received notice and either responded,
15 opted out, or not responded at all?

16 MR. PARONICH: I'll take that first, Your Honor,
17 for the plaintiffs. Actually, since we've been talking, I
18 have the settlement agreement in front of me; and I see the
19 language regarding the sale of and the class definition.
20 And if that was revised or removed and inserted instead,
21 "and sold," I think that accomplishes this. I think it's
22 consistent with the parties' intention.

23 And to segue to your point, as I think the case law
24 is pretty clear, that if we were expanding the relief that
25 Agentra was getting or the amount of class members, we are

1 under an obligation to send notice. But if we are keeping
2 the same or restricting that and the class members in that
3 way get more and Agentra gets less, here, I think it's clear
4 we're keeping the same, then no further notice is required.

5 THE COURT: Thank you, Mr. Paronich.

6 Mr. Richmond, anything you wanted to add on that score?

7 MR. RICHMOND: No. I believe that's consistent
8 with my experience in other class cases, is that if there
9 are -- especially if it's just a clarification and/or
10 keeping it to an understood narrower relief, if there's a
11 whiff of more relief is being granted without notice, that's
12 where we would need to kind of belt and suspenders.

13 THE COURT: Okay. Mr. Richmond, I want to go back
14 to the settlement agreement, because in Paragraph 4, and
15 this is 4(a)(3), and I believe it's Page 5 of the settlement
16 agreement, there's a reference to the settling defendant
17 providing a declaration regarding financial hardship.

18 I know that we've had some discussion here today
19 and also in the briefing about the financial documents that
20 were exchanged and the willingness to provide those to me in
21 camera, which I would like to receive; and we can talk about
22 that at the end of this proceeding. Have you prepared that
23 declaration, and are you intending to do so if you have not?

24 MR. RICHMOND: I don't believe we have, but we are
25 intending to do it without question. And just to jump to

1 the end, there is no objection for an in-camera review. I
2 don't even know if we could object. But we aren't going to
3 object to an in-camera review of the financial information.
4 The identical information was provided to Mr. Peluso and to
5 Mr. Paronich separately and then, you know, as part of
6 leading up to this hearing. So certainly happy to jump
7 through the hoops necessary to get that done.

8 THE COURT: Okay. So I would appreciate that, and
9 we can talk a little bit later about how this is done. But
10 I would like to see the documents, and I believe all of you
11 have already said, both in your papers and here today, that
12 there's no objection to providing them for an in-camera
13 review.

14 But, Mr. Richmond, I think you also need to comply
15 with that section of the agreement by providing that
16 declaration. And that, of course, can be maintained under
17 seal as indicated there. But if you can take care of that,
18 I think that would be appropriate.

19 I also want to make sure, finally, Mr. Richmond, I
20 understand your position, that I understand there is a
21 provision, I believe, in the settlement agreement about
22 opt-outs and what happens if someone opts out. And I want
23 to make sure I understand what your position is on that,
24 because I know there is a no-opt-out provision in there. I
25 assume you're reserving your rights with respect to that if

1 I were to allow Ms. Abboud to opt out.

2 MR. RICHMOND: Correct.

3 THE COURT: All right. I also have some questions
4 for you, Mr. Peluso. Thank you, Mr. Richmond. I know that,
5 Mr. Peluso, I don't have any doubt that you were not aware
6 of the existence of this lawsuit, according to what you've
7 said in your papers. Do you have any reason to doubt that
8 someone else, either prior or referral counsel, did, in
9 fact, contact Mr. Paronich as early as November of 2018?

10 MR. PELUSO: So I haven't inquired about it, but I
11 don't have any reason to doubt that what Mr. Paronich is
12 saying is not true. It wouldn't surprise me. Mr. Paronich
13 and I actually have a relationship, I think, with the same
14 referral counsel. So it would not surprise me if, you know,
15 Mr. Paronich was approached before I was approached; but I
16 don't have any knowledge of that.

17 THE COURT: Okay. That's fine. I just wanted to
18 make sure I understood your position on that.

19 MR. PELUSO: But I do think -- just to clarify
20 there on the timeline of this, I think, you know, I -- we
21 found out in January or so when -- I think it was
22 Mr. Richmond's associate, Andrew Lynn, who first let me know
23 about this case.

24 It's true that we didn't seek to intervene until
25 October. But, you know, the timeline of it is I think it's

1 April or so that there's a notice of settlement in this
2 case. There's no details of exactly what is being settled.

3 And that's the only reason -- I don't dispute what
4 Mr. Paronich said, that he has the right to settle a class
5 that doesn't match up with the class that he has pled. We
6 only brought that up simply for the point that, you know, a
7 class is settled when the notice of settlement is filed.
8 There's no details about what exactly is being settled. And
9 then when you look at the Amended Complaint, the claims
10 don't match up with what we had. So at that point, what are
11 we intervening for?

12 And also, at that point, our classes had not been
13 certified yet. So that didn't happen until September. I
14 didn't have this fiduciary duty at that point to this group
15 of people to jump in and make sure that this settlement is
16 fair, reasonable, and adequate. That didn't happen until
17 September. And then as October rolls around and my client
18 receives notice of the settlement in this class, that's when
19 we chose to intervene.

20 So I just wanted to provide a little bit more
21 background on the delay there, I guess, between January and
22 October. It wasn't really until the latter end of the year
23 that our class was certified and that it was clear, because
24 Abboud received notice, that she was included in this
25 settlement, anyway.

1 THE COURT: No. I appreciate that. Thank you.
2 Now, just to make sure I understand your objection, is it to
3 the entire class, some subset of the class? I know that you
4 have as certified a text class and an agent class. Are we
5 only here talking about an issue with respect to your agent
6 class, or does it encompass both?

7 MR. PELUSO: That's correct. I don't think it
8 encompasses the text class at all. And the agent class, we
9 have -- our agent class is limited to people who were called
10 by two agents, and those two are part of this group of nine
11 or ten that are included in this settlement class. So,
12 yeah, we have the fiduciary duty to people who were called
13 by a subset of this settlement class.

14 THE COURT: Got it. Okay. So the text class,
15 we're not talking about at all here?

16 MR. PELUSO: No.

17 THE COURT: Does the agent class include both
18 people who purchased policies and people who did not?

19 MR. PELUSO: Yeah. As defined, it's just persons
20 who were called by these two agents for the purpose of
21 promoting Agentra's insurance product or that could have
22 resulted in the purchase of Agentra's insurance product. So
23 I think it includes that broader universe, yes.

24 THE COURT: And I'm assuming Ms. Abboud purchased
25 a policy.

1 MR. PELUSO: Yeah. There was some -- she did do
2 what Mr. Paronich said that his clients did, play along to
3 try to figure out what was happening. There was some
4 discussion at the 30(b)(6) deposition of Agentra that she
5 essentially had been signed up by accident. Her credit card
6 was charged, but it wasn't supposed to be charged. Either
7 way, she received a notice. So she was signed up. She
8 received a notice. She apparently appears on the settlement
9 class list here.

10 THE COURT: Okay. Understood. And describe for
11 me, if you could, and perhaps we've already touched on this
12 a fair deal, what is the overlap between the settlement of
13 this case and how it impacts your case? Is it just limited,
14 as we've talked about, to the two agents who have been
15 identified within the agent class? Is that essentially the
16 overlap?

17 MR. PELUSO: That's correct, Your Honor.

18 THE COURT: I don't want to hold you to that. I
19 mean, feel free to expand on that.

20 MR. PELUSO: No. I think that's an accurate
21 representation, Your Honor. We represent a subset of the
22 people at issue here, have a fiduciary duty to them,
23 reviewed the same financial documents that were provided at
24 the -- you know, we had a mediation in our case.
25 Mr. Paronich had a mediation in this case.

1 We received the same financial documents. We found
2 them to be completely inadequate to evaluate the financial
3 condition of this company. We have a duty as class counsel
4 to these people, and that's why we intervened and objected.

5 THE COURT: Understood. And do you want to say
6 anything further about why you believe this settlement is
7 unfair, unreasonable, inadequate? I know you've already
8 talked about it in your papers and here today, but I want to
9 give you any further opportunity based on what counsel for
10 the parties have already said.

11 MR. PELUSO: No, Your Honor. The only other thing
12 I would add, Mr. Paronich earlier was talking about the
13 statutory damages. And that's correct. I would just make
14 the point that it's \$500 per call. Right. So if a person
15 receives 5 calls, it's not \$500, it's \$2,500.

16 So to the point that, you know, claimants here
17 apparently are receiving \$48 or \$49, you know, that seems to
18 be -- it doesn't account for how many calls they may have
19 received. So someone may have a claim for three calls and
20 they're only getting \$48. I would just simply suggest that
21 as the financial documents Your Honor plans to review will
22 show, this defendant could pay more than they're paying
23 here.

24 THE COURT: All right. I appreciate that. I need
25 to take just a quick five-minute break. I believe we're

1 about done. I have one matter I have to attend to. It will
2 only take five minutes. So if you can all bear with me.
3 Feel free to come back in five minutes on the conference,
4 and I believe we're close to being done. So we'll see you
5 back here in five minutes.

6 MR. PARONICH: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Recess taken.)

9 THE COURT: Thanks, everyone, for allowing me to
10 take that quick break. Mr. Paronich, is there anything else
11 that you want to address with respect to the requirements
12 under Rule 23(a)? I believe that much of that has been
13 covered already through both affidavits and written
14 submissions. But is there anything else you feel you need
15 to address about those four factors?

16 MR. PARONICH: There is not, Your Honor. I have a
17 couple of other quick points to address, but I'll wait for a
18 more appropriate time if --

19 THE COURT: Now is a good time.

20 MR. PARONICH: So I think there were a couple of
21 issues I wanted to -- and one was to clarify, because our
22 position would have been different. Mr. Peluso, I don't
23 doubt that he did not -- he was unaware that his client,
24 through a referring attorney, had approached me, because,
25 frankly, if we thought that was true, we would have taken a

1 more aggressive position about it. So I wanted to make that
2 clear.

3 The second issue is that Your Honor had raised to
4 Agentra's counsel about the lack of ability for opt-outs,
5 which does get discussed in Agentra's response to the
6 objections; but I wanted to clarify my understanding under
7 the settlement agreement, that that's a prohibition against
8 mass opt-outs.

9 So if Ms. Abboud, herself, opts out to pursue her
10 claims with the certified classes, I don't think there is a
11 tenable argument that that would be a violation of the
12 agreement. But, again, of course, that's distinct from a
13 mass opt-out.

14 And Your Honor may anticipate describing this, but
15 I think it would be helpful to understand, Your Honor will
16 certainly be taking a look in camera at the financials that
17 were provided to us. But also understanding any other
18 detailed financial information, which is what's required, I
19 think it could aid the Court in making its determination
20 about what else Agentra should be submitting for the Court
21 to review.

22 But with respect to that financial condition, I
23 don't want to re-emphasize, I'll just simply state again
24 that the fact that Agentra could potentially pay more money
25 with a judgment against it versus the strengths and

1 weaknesses of this case was a big deciding factor for us;
2 and it's why, out of all the TCPA settlements out there that
3 had been approved, what we provided in our string cite was
4 Capital One, Bank of America, Wells Fargo, and entities like
5 that, because there is no issue of their financial ability
6 to pay with the settlement. It's just we're always about --
7 we're comparing that to the strengths and weaknesses and the
8 stage of the litigation.

9 And my final point does relate to Mr. Peluso's
10 comment that I agree with, that is \$500 per call. Here,
11 when we're defining our class, just based on the policies
12 purchased, we don't have the records of the amount of calls
13 the individuals received. So with respect to our, I
14 believe, 23(b) obligation to treat all class members fairly,
15 what we did is if individuals had multiple purchases, which
16 could happen through multiple investigations into what they
17 would allege are illegal calls, and they had multiple phone
18 numbers, we're paying them once per phone number. And that
19 is a distinction, frankly, from a number of other of the
20 Capital One, Bank of America, Wells Fargo settlements.

21 And having known from being a part of some of those
22 other cases, it's a situation where if you hire a debt
23 collector and they're trying to collect on a credit card
24 debt, you know, it's, frankly, a little stomach-churning how
25 many calls can be made there.

1 And here, while I don't have any reason to
2 believe -- and it doesn't make logical sense that a
3 solicitation call -- if they're being told, "I'm not
4 interested" or "no," they should move on. I'm not saying
5 they always do.

6 But here, I just don't think there's the kind of
7 volume that would warrant concern about how the money is
8 being distributed here, because we have taken into account
9 if they have more than one number called, they're going to
10 get a pro rata share. And those are all my notes,
11 Your Honor. Thank you.

12 THE COURT: Thank you. Mr. Richmond, do you want
13 to add anything either to what Mr. Paronich has just talked
14 about or anything else that you believe is helpful before we
15 conclude?

16 MR. RICHMOND: I would just say that the flip side
17 of the question of could you squeeze more pennies on a
18 settlement out of a particular party based on saying, well,
19 it looks like these financials show you have a little bit
20 more money, you could -- and I don't know whether the Court
21 is going to look at that and decide -- I don't think the
22 Court is going to conclude that when the Court looks at the
23 financials. But that certainly has to be countered against
24 the question and really the lack of any evidence or even
25 substantive argument by Mr. Peluso that there has been a

1 misevaluation of the vicarious liability issues in this
2 particular case or the ability to be able to prove up that
3 these calls took place, who they were on behalf of, how they
4 got transferred, how many occurred. And those are
5 substantial questions.

6 So, you know, could I squeeze out some more summary
7 judgment wins and they could squeeze out some more dollars
8 in settlement? Potentially. But I know the Court will
9 weigh all of those options, and I think there's certainly
10 no -- the Court will only be aided by seeing the financials
11 and taking those in the context of this particular
12 settlement. If the result is that I get to go further
13 vindicate my client through further litigation in this case,
14 so be it.

15 THE COURT: Okay. Thank you, Mr. Richmond.
16 Mr. Peluso, anything else that you would like to add?

17 MR. PELUSO: Yeah. Just two points really
18 quickly. One, I agree with what Mr. Paronich said about
19 opt-outs. We obviously took a look at the agreement. I
20 understand that there's a provision against mass opt-outs.
21 Currently, individuals have to have the opportunity to opt
22 out. It would violate due process if a class settlement was
23 agreed to and you didn't have the opportunity to opt out of
24 it. So, you know, I agree there.

25 On this vicarious liability question and, you know,

1 the fact that -- this argument that the case is properly
2 valued and it doesn't really matter if Agentra could pay
3 more, you know, I would just point out again, you know, that
4 we're talking about this settlement fund being roughly
5 three percent of the available recovery just if each person
6 received one call.

7 To say that Mr. Paronich only has a three-percent
8 chance of convincing the Court that Agentra could be
9 vicariously liable I think undersells Mr. Paronich's skill.
10 I think that it's a low recovery relative to the available
11 amount. I'm certainly not saying that a settlement has to
12 be for 500 times the number of calls. I mean, that's not
13 the purpose of settlement. Right? There's risk on both
14 sides, parties come together, they compromise. I understand
15 all of that.

16 I'm simply suggesting that the settlement here is
17 too low given the potential recovery. Even considering the
18 opportunity likelihood of success on the merits, it's
19 certainly greater than three percent. And this is not a
20 company that would be bankrupt by paying more. So with
21 that, I thank Your Honor very much for allowing me to
22 appear.

23 THE COURT: Of course. And I assume regardless of
24 my ruling, Ms. Abboud is opting out of this settlement?

25 MR. PELUSO: Correct, Your Honor. There was a

1 little bit of debate, frankly, on our end about whether to
2 opt out before objecting, that perhaps if you opted out, you
3 lost the right to object. So certainly, if the objection is
4 not sustained, then we will be opting out.

5 THE COURT: Okay. I just wanted to make sure I
6 understood that. I assumed that that was the case, but
7 thank you for that clarification. Anything else before we
8 turn to how the financial documents are going to be
9 conveyed?

10 MR. PARONICH: Is that for anyone, Your Honor, or
11 just for Mr. Peluso?

12 THE COURT: Anyone.

13 MR. PARONICH: Just very briefly, Your Honor, I
14 appreciate Mr. Peluso's sentiment. What I would say is that
15 on the number of calls, on the likelihood of success,
16 because we are also evaluating vicarious liability factors,
17 which there's no overlap with one of Mr. Peluso's classes,
18 it seems like he doesn't have that present.

19 So he'll be able to pursue a case that doesn't have
20 the vicarious -- the same vicarious liability issues, I
21 should say, that are present here. And it's why that
22 3.7 percent number -- I mean, frankly, it's effective
23 advocacy to use it, because it sounds low. But then that's
24 why we provided the string cite of the range of reasonable
25 settlements in this district circuit and otherwise,

1 including Judge Kearney at 0.9 percent, because the
2 statutory damages are -- we believe that they are
3 appropriate, but we also recognize that they're severe.
4 Thank you.

5 THE COURT: Mr. Paronich, I'm just curious, in a
6 case like this, maybe you can review for me how you would
7 prove that calls were made. Are you looking at the
8 telephone records of members of the class? Are you looking
9 or trying to discover telephone records from the subvendors,
10 vendors, those sorts of folks; and how difficult or not is
11 that?

12 MR. PARONICH: The bane of my existence,
13 Your Honor. So it is the -- because you're exactly right.
14 If you have a direct liability case, you have the ability to
15 request first-party discovery, I would like the calling
16 records. A defendant will object precertification nine
17 times out of ten.

18 With a vicarious liability case, you have to start
19 with the policy purchase. You approach the defendant in
20 their Rule 26 disclosures or -- because they're often
21 saying, "Well, that's not relevant to our defense," in the
22 first party discovery, "Who sold the policy?" We did that
23 here. We amended our complaint and named those individuals.

24 They'll default. They defaulted here. Actually,
25 there was a default, there was an appearance, a removal. It

1 was kind a mess. So that will happen. You'll then approach
2 that party through first-party discovery and say, "Where did
3 the individuals' lead come from?" They identified that
4 vendor.

5 We then go and subpoena that vendor who, if they're
6 in the U.S., and often they're not, they'll say, "Oh, well,
7 you know, we hired Tom's Leads in order to generate that
8 lead. We don't have Tom's Leads' contact information," or,
9 "Here is their contact information."

10 And if that party is in the U.S., you then issue
11 them a subpoena, and so it goes. Here, we did all of that,
12 got to the Tom's Leads entity, found out that they were
13 getting leads from, I believe, overseas, but also this one
14 individual in Texas, went to this individual in Texas,
15 issued a subpoena, had it ignored, and then went in to file
16 an enforcement action, was able to negotiate getting these
17 calling records, got an affidavit so we could authenticate
18 them, and then started again, in earnest, in terms of --
19 from a litigation strategy perspective, how are we going to
20 prove Agentra's vicarious liability with this five degrees
21 of separation.

22 And then to take a look at the settlement that we
23 had here and to think about how could we -- because there's
24 no doubt that this is not the amount of money that a lot of
25 our settlements are for or -- and I can't speak to the rest

1 of the TCPA bar, but it's certainly -- you know, I guess the
2 proof is on PACER now.

3 The lodestar we're seeking here, it's 50 percent of
4 what we put into the case or roughly 50 to 60 percent. And
5 the reality is that we didn't see a viable -- and I kind of
6 still don't see a viable path forward of starting with those
7 call logs, leading them all the way back to certifying our
8 class.

9 So instead, we wanted to take -- we approached
10 Agentra with if we can limit this release and limit this
11 class to individuals you got the benefit for, that's how we
12 put together the class list.

13 THE COURT: Thank you. I appreciate that.
14 Mr. Richmond, with respect to the financial documents that
15 have been discussed both before today and today, what I
16 would like you to do with respect to those is if you're
17 comfortable sending them by e-mail to my courtroom deputy,
18 she will make sure they get to me; and we will ensure that
19 they are kept confidential, and I'll review them in camera.

20 You can give some thought to how you want to handle
21 your declaration that's referenced in the settlement
22 agreement. But just a reminder that just to accomplish the
23 purposes of the settlement agreement, that needs to be done,
24 as well.

25 If you're not comfortable sending any confidential

1 documents by e-mail, you can certainly send them in another
2 way, and I'll get them. So I don't want you to feel any
3 concern that if you do it in that way, it heightens any
4 concern that you might have. So what is your preference on
5 these issues?

6 MR. RICHMOND: I would trust the court's e-mail
7 system. So I have no problem there. I did -- just so there
8 is a record somewhere, I had intended to file a notice. So
9 I will Bates label those records. I'll share them, of
10 course, again, with Mr. Peluso and Mr. Paronich so they
11 know. You know, and I'll just put a label on there that
12 these are being submitted for an in-camera review and then
13 file a one-sentence notice in the court's records that we
14 submitted those.

15 So that way, if these records are identified
16 somewhere in your office or subsequently that folks -- there
17 will be some record in the system and on PACER to reflect,
18 and it will just say these Bates labels were submitted today
19 by e-mail to this address for in camera and confidential
20 review.

21 THE COURT: That's fine with me. And I think you
22 have Ms. Eckenrode's e-mail address. I know she reached out
23 to everyone with the information for today's conference.
24 But feel free to call us if you need any further help there.
25 Is there anything else that anyone wanted to address or

1 raise during this proceeding?

2 MR. PARONICH: Not for the plaintiff, Your Honor.
3 Thank you.

4 MR. RICHMOND: Nothing for Agentra, Your Honor.

5 MR. PELUSO: Nothing from me, either, Your Honor.

6 THE COURT: All right. Well, I'm going to take
7 all of this under advisement. I'll wait to get those
8 financial documents. Let me ask before we conclude -- I
9 never want to foreclose anyone's final opportunity to submit
10 a brief. Is there anyone who feels there's any issue that
11 needs to be briefed before I review this and make my
12 decision?

13 MR. PARONICH: Not for the plaintiffs, Your Honor.

14 THE COURT: All right. Mr. Richmond?

15 MR. RICHMOND: No, Your Honor.

16 THE COURT: Mr. Peluso?

17 MR. PELUSO: No.

18 THE COURT: All right. Well, I'm sure you're not
19 unhappy to say that you don't have to brief anything more on
20 this. I very much appreciate your efforts here today. It
21 was very helpful to me. So with that, we're concluded for
22 today. And if I have any additional questions or feel that
23 we need a further call, I'll certainly let you know about
24 that. But otherwise, thank you. That concludes our
25 proceeding here today.

1 MR. PELUSO: Thank you, Your Honor.

2 MR. RICHMOND: Thank you, Your Honor.

3 (Court adjourned.)

4

5

C E R T I F I C A T E

6

7 I, Amanda M. Williamson, certify that the foregoing
8 is a correct transcript from the record of proceedings in
9 the above-titled matter.

10 S/Amanda M. Williamson _____

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25